
IN THE UNITED STATES JUDICIAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

IN RE SUBPOENA SERVED UPON
ANDERSON & KARRENBURG, P.C.
Relating to the litigation pending in the United
States District Court for the District of Maryland
captioned *Novell, Inc. v. Microsoft Corp.*,
Civil Action No. JFM-05-1087 (Consolidated
into *In re Microsoft Corp. Antitrust Litigation*,
MDL Docket No. 1332)

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
COMPEL ANDERSON & KARRENBURG
P.C. TO PRODUCE DOCUMENTS IN
RESPONSE TO A SUBPOENA**

Case No. 2:08 mc 675 DB

District Judge Dee Benson

Magistrate Judge David Nuffer

Microsoft Corporation (Microsoft) filed this ancillary action seeking enforcement of several subpoenas including one served on Anderson & Karrenberg, P.C., a law firm which represents Novell, Inc. (Novell).¹ Novell and Microsoft are parties to a dispute in the U.S. District Court for the District of Maryland.² In that action, Microsoft has sought discovery from Novell and now Microsoft seeks to obtain similar discovery from Anderson & Karrenberg.³

Anderson & Karrenberg has provided complete copies of many boxes of documents to Novell, at its request, so that Novell could respond to discovery from Microsoft.⁴ The law firm did not send Novell a few folders containing legal research and videotapes of two depositions,

¹ Motion to Compel Anderson & Karrenberg to Produce Documents in Response to a Subpoena, docket no. [1](#), filed September 5, 2008.

² Microsoft's Memorandum in Support of its Motion to Compel Anderson & Karrenberg to Produce Documents in Response to a Subpoena (Memorandum in Support) at viii, docket no. [2](#), filed September 5, 2008

³ The requests are found in Memorandum in Support at xi-xiii.

⁴ Memorandum in Opposition to Microsoft's Motion to Compel . . . (Memorandum in Opposition) at 6-7, docket no. [21](#), filed September 29, 2008.

for which transcripts were provided.⁵ Novell has in turn produced many documents to Microsoft⁶ in response to these “substantively identical”⁷ discovery requests. There are, however, pending disputes between Microsoft and Novell about Novell’s responses to discovery.⁸

There are still some documents responsive to the subpoena that Anderson & Karrenberg have not produced. These include documents created *during* some litigation in which the boxes of documents were used.⁹ Anderson & Karrenberg is searching for these.¹⁰ These documents are responsive to the Request No. 7 in the Anderson & Karrenberg subpoena.¹¹

The parties’ extensive briefing raises many issues. But the enforcement of this subpoena, except for Request No. 7, would place an undue burden¹² on the law firm, in light of substantially identical party discovery which has not been shown to be futile or ineffective.

ORDER

IT IS HEREBY ORDERED that the motion to compel is GRANTED IN PART and DENIED IN PART. Within ten days of this order, Anderson & Karrenberg shall provide

⁵ *Id.* at 7.

⁶Memorandum in Opposition at 10.

⁷ Memorandum in Support at xi.

⁸ Microsoft’s Reply Memorandum in Further Support of Its Motion to Compel . . . (Reply Memorandum) at 4, docket no. [25](#), filed October 10, 2008

⁹ Memorandum in Opposition. at 10-12.

¹⁰ *Id.*

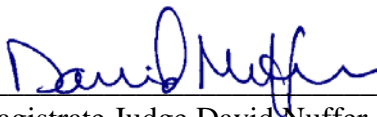
¹¹ Reply Memorandum at 3.

¹² [Fed. R. Civ. P. 45\(c\)\(3\)\(A\)](#).

Microsoft with three dates within 45 days of this order on which it is prepared to respond to the subpoena as to Request No. 7 and related testimony.

Dated this 9th day of December, 2008.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

Magistrate Judge David Nuffer